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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/600,774
Inventor(s) : Bryan K. Feller et al.
Filed : June 20, 2003
Art Unit : 3761
Examiner : Melanie Jo Hand
Docket No. : 9281
Confirmation No. : 5936
Customer No. : 27752
Title : SANITARY NAPKIN FOR CLEAN BODY BENEFIT

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

INTRODUCTORY REMARKS

In response to the Office Action of June 7, 2007, Applicants are filing herewith a Notice of Appeal and respectfully request review of the present application before the filing of an appeal brief.

Status of the Claims

Claims 1, 4-6, 10, 11, 15, and 16 are pending in the application.

Claims 1, 4-6 and 11 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al., US 4,865,596, in view of Takahashi et al., US 6,329,465.

Claim 10 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al. in view of Takahashi et al., and further in view of Cinelli et al., US 2002/0013565 A1.

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Claims 15 and 16 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al. in view of Takahashi et al., and further in view of Ohashi et al., US 2002/0065498 A1.

Ground of Rejection for Review

Applicants respectfully submit that Claims 1, 4-6, 10, 11, 15, and 16 are patentable over the cited references.

Rejection Under 35 U.S.C. §103(a) Over Weisman et al. In View of Takahashi et al.

Claims 1, 4-6 and 11 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al., US 4,865,596, in view of Takahashi et al., US 6,329,465. Applicants respectfully traverse this rejection.

Applicants submit that the Office Action has failed to set forth a *prima facie* case of obviousness in accordance with MPEP §2143. The present claims require, *inter alia*, a fluid permeable facing layer having a first elastic modulus and comprising a topsheet and a secondary topsheet. The present claims further require, *inter alia*, an absorbent core joined to the facing layer and having a second elastic modulus, wherein the first elastic modulus of the facing layer is greater than the second elastic modulus of the absorbent core.

The Office Action properly admits that Weisman et al. do not teach a facing layer that comprises a topsheet and a secondary topsheet. The Office Action further properly admits that Weisman et al. therefore do not teach a facing layer having an elastic modulus that is greater than the elastic modulus of an absorbent core joined to the facing layer.

However, the Office Action then improperly refers to the teachings of Takahashi et al. and asserts that "[i]t would have been obvious to one of skill in the art to modify the article of Weisman by substituting the liner material taught by reference to Roberts with the liner material taught by Takahashi to provide a facing layer with increased transparency, strength and moldability."

The Office Action asserts that Takahashi et al. teach a facing layer comprising a topsheet and a secondary topsheet at col. 46, lines 15-20. Applicants are not sure how the Office Action arrives at this conclusion, as this passage of Takahashi et al. describes a

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multi-layer film structure that is used as a packaging film, such as for packaging fresh red meat. There is no discussion or suggestion in Takahashi et al. that this multi-layer film structure would be suitable as a facing layer in an absorbent article comprising a topsheet and a secondary topsheet, such as presently claimed.

Furthermore, the present claims in the instant application require a fluid permeable facing layer. Although the multi-layer film structure taught by Takahashi et al. can be oxygen permeable ("to allow the fresh red meat to 'bloom' to the desired bright red color" – see col. 45, lines 22-27), the multi-layer film is clearly fluid impermeable, as packaging fresh red meat in a fluid permeable film would be a messy and unsanitary proposition. Moreover, Takahashi et al. teach that its films are water impermeable at, e.g., col. 55, lines 1-4.

It would therefore be improper to substitute the fluid impermeable film taught by Takahashi et al. for the lining layer of Weisman et al., as such a substitution would render the fluid absorbency properties of the Weisman et al. absorbent articles useless, since the fluid would not be able to penetrate through the film of Takahashi et al. and into the absorbent core of the article of Weisman et al.

Applicants therefore respectfully submit that the current rejection of Claims 1, 4-6 and 11 under 35 U.S.C. §103(a) over Weisman et al. in view of Takahashi et al. is improper, and that Claims 1, 4-6 and 11 are allowable over the cited references.

Rejection Under 35 U.S.C. §103(a) Over Weisman et al. In View of Takahashi et al. and
Further In View of Cinelli et al.

Claim 10 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al. in view of Takahashi et al., and further in view of Cinelli et al., US 2002/0013565 A1. Applicants respectfully traverse this rejection.

For the reasons discussed *supra* with respect to the rejection of Claims 1, 4-6 and 11, *inter alia*, Applicants submit that the rejection of Claim 10 over Weisman et al. in view of Takahashi et al. and further in view of Cinelli et al. is improper, and that Claim 10 is allowable over the cited references.

Rejection Under 35 U.S.C. §103(a) Over Weisman et al. In View of Takahashi et al. and
Further In View of Ohashi et al.

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Claims 15 and 16 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Weisman et al. in view of Takahashi et al., and further in view of Ohashi et al., US 2002/0065498 A1. Applicants respectfully traverse this rejection.

For the reasons discussed *supra* with respect to the rejection of Claims 1, 4-6 and 11, *inter alia*, Applicants submit that the rejection of Claims 15 and 16 over Weisman et al. in view of Takahashi et al. and further in view of Ohashi et al. is improper, and that Claims 15 and 16 are allowable over the cited references.

Conclusion

In view of the foregoing remarks, reconsideration of this application and allowance of the pending claims are respectfully requested. In the event that the pending claims are not allowed and prosecution is reopened as a result of the review, Applicants would welcome and consider any proposed amendments to the claims that may result in an indication of allowability.

Respectfully submitted,

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By



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